

<p style="text-align: right;">Page 121</p> <p>1 A His statements and his testimony.</p> <p>2 Q Is your opinion that the door moved away from the 3 railing of the vessel six inches?</p> <p>4 A It could have been. I don't know. There is no way, 5 there is no way to quantify the exact amount of 6 movement. It's impossible.</p> <p>7 Q You would agree with me if one were to -- There are 8 two ways the door could move, the first being the 9 wire was let out from the main towing wire, wire 10 would let out in which case the door would drop?</p> <p>11 A If the wire was let out, the door would drop.</p> <p>12 Q If the wire was pulled in, the door would lift up?</p> <p>13 A That's correct.</p> <p>14 Q That's one way in which the door could move, 15 correct?</p> <p>16 A That would be vertical movement.</p> <p>17 Q Correct?</p> <p>18 A Right.</p> <p>19 Q It would appear as vertical movement by anybody 20 standing on the boat?</p> <p>21 MR. REGAN: Objection. Go ahead.</p> <p>22 Q If you are standing on the boat, it would appear to 23 them it was moving up and down, correct?</p> <p>24 MR. REGAN: Objection.</p>	<p style="text-align: right;">Page 123</p> <p>1 the bottom of Magnetic Hill, it appears as if the 2 hill that you are rolling on is going uphill but 3 it's actually going downhill, and that is the 4 attraction of Magnetic Hill. That's the beauty of 5 it. The objects around that hill give the 6 appearance that you are going uphill with your car 7 in neutral and the brake off and the car is rolling. 8 The kids get all excited.</p> <p>9 Q Never been there, so I don't know.</p> <p>10 A It's in New Brunswick, I believe. It's a great 11 place to bring your kids.</p> <p>12 [Recess]</p> <p>13 Q Directing your attention to your affidavit which we 14 marked in this deposition as exhibit --</p> <p>15 MR. REGAN: Several copies.</p> <p>16 Q -- 7, so we're clear, as I understand it, you 17 believe that what caused in connection with 18 Mr. Aguiar's injury, what caused the chain to come 19 taught was the lateral movement of the door away 20 from the rail of the boat, is that correct?</p> <p>21 A It is more likely than not that that is what 22 happened.</p> <p>23 Q That if I understand your opinion, what occurred was 24 the boat rolled, he was on the port side so it</p>
<p style="text-align: right;">Page 122</p> <p>1 A If you were standing still and you moved it up or 2 down, it wouldn't appear as if it was moving up and 3 down, it would actually be moving up and down. If 4 you operated the winch up, it would move up; if you 5 let it down, it would go down.</p> <p>6 Q Correct. You would agree that, and we talked about 7 it earlier, that we're all moving around the earth 8 and the earth in moving around the sun and all sorts 9 of things like that. That movement, relative 10 movement, had to do with where you are looking at it 11 from, correct?</p> <p>12 A Well, relative movement had to do with one object 13 moving relative to other objects on which you are 14 standing or on which you are on a moving object 15 looking at a fixed object. It's all relative to 16 where you are or how you are observing it.</p> <p>17 Q If you haul in the wire, the main wire, if you are 18 standing with your feet on that deck, that door is 19 going to appear to move upward?</p> <p>20 A No, it's not going to appear to move upward, it is 21 actually going to move upward.</p> <p>22 Q Relative to you.</p> <p>23 A Right. When you go to Magnetic Hill in Canada and 24 you are standing at the bottom, you have your car at</p>	<p style="text-align: right;">Page 124</p> <p>1 rolled to port, the door swung away from the boat?</p> <p>2 A Correct.</p> <p>3 Q When it swung away from the boat, the safety chain 4 became taught?</p> <p>5 A Correct.</p> <p>6 Q When the safety chain became taught, it pulled the 7 pelican hook open?</p> <p>8 A Correct, before he had it.</p> <p>9 Q Crushing his finger between the back side of the 10 pelican hook and the chain, correct?</p> <p>11 A That I'm not sure of. Based on what he said, the 12 pelican hook snapped open and struck him. It could 13 have been just a striking. Whether or not it became 14 pinched I'm not sure. I know that is the physical 15 mechanical portion of the injury. Whether it got 16 pinched between that hook and the chain, I'm not 17 sure.</p> <p>18 Q Have you ever spoken to him about his accident?</p> <p>19 A Mr. Aguiar, no, I have not.</p> <p>20 Q So what you are relying on is what were the 21 materials provided by Mr. Regan?</p> <p>22 A His statement and his deposition.</p> <p>23 Q Have you ever talked to your son about the taking of 24 his statement?</p>

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<p style="text-align: right;">Page 125</p> <p>1 A Not that I recall.</p> <p>2 Q Do you know if there is a procedure at Marine Safety</p> <p>3 Consultants with respect to taking the statement</p> <p>4 from an injured crew member?</p> <p>5 A A standard procedure in how to take a statement or</p> <p>6 when to take a statement?</p> <p>7 Q You take a statement every time you have been</p> <p>8 assigned to investigate an injury on a commercial</p> <p>9 fishing vessel, correct?</p> <p>10 A When the witnesses are available and there is time</p> <p>11 and opportunity to take a statement, yes.</p> <p>12 Q With respect to the injured person, you always would</p> <p>13 like to take a statement from the injured person?</p> <p>14 A If they are willing to provide a statement of their</p> <p>15 version of the facts, yes, injured person and</p> <p>16 witnesses.</p> <p>17 Q Isn't it true that normally before you would</p> <p>18 actually, if you are going to take a tape-recorded</p> <p>19 statement, before you take the tape-recorded</p> <p>20 statement, you would interview the injured party to</p> <p>21 find out how the accident occurred and so forth and</p> <p>22 so on?</p> <p>23 A Conduct a brief preliminary interview just to</p> <p>24 establish an understanding of why a statement is</p>	<p style="text-align: right;">Page 127</p> <p>1 drogue. It's less able to be moved in a seaway than</p> <p>2 an object in air.</p> <p>3 Q And it would tend to dampen the amount in which the</p> <p>4 door would move away from the side of the vessel,</p> <p>5 correct?</p> <p>6 A Well, not dampen, it would physically prevent it</p> <p>7 because there is another chain connecting the bag of</p> <p>8 fish to the door.</p> <p>9 Q So if the bag of fish is attached to the door, okay,</p> <p>10 will the door swing away on both sides, will the</p> <p>11 door swing away from the side of the vessel when the</p> <p>12 boat rolls?</p> <p>13 A Yes.</p> <p>14 Q Will the bag tend to dampen the amount by which the</p> <p>15 door will swing away from the side of the vessel</p> <p>16 when the boat rolls?</p> <p>17 A Not enough to allow them to do what they have to do</p> <p>18 with the door to transfer the load from the door to</p> <p>19 the net drum. That's why they put the safety or</p> <p>20 restraining chain on it.</p> <p>21 Q Repeat that?</p> <p>22 A The purpose of the strap in the first place, the</p> <p>23 safety chain, is to prevent the door from moving.</p> <p>24 In order to --</p>
<p style="text-align: right;">Page 126</p> <p>1 going to be taken, find out briefly what happened,</p> <p>2 and then when the person giving the statement was</p> <p>3 prepared, lead into the formal statement, yes.</p> <p>4 MR. REGAN: Objection again to this topic</p> <p>5 as not something he is being proffered as an expert</p> <p>6 witness on. I'll have a standing objection if I can</p> <p>7 on that.</p> <p>8 Q Going to your affidavit which we've marked as</p> <p>9 Exhibit --</p> <p>10 MR. REGAN: 7 is the one that was</p> <p>11 actually filed in court. There are several copies</p> <p>12 out here on the table.</p> <p>13 Q Exhibit 7, paragraph 7 is what we've just been</p> <p>14 talking about, okay? Correct?</p> <p>15 A 7 and 8.</p> <p>16 Q You would agree with me that the bag is not going to</p> <p>17 be able to swing through the water the way the door</p> <p>18 can swing through the air, the bag of fish?</p> <p>19 A No, that's the correct.</p> <p>20 Q That would since the bag is in the center line of</p> <p>21 the vessel, okay, and hanging on the doors, okay,</p> <p>22 then that would tend to retard any movement of the</p> <p>23 door, correct?</p> <p>24 A Well, the bag of fish acts as an anchor, a sea</p>	<p style="text-align: right;">Page 128</p> <p>1 Q Who told you that?</p> <p>2 A Why else would there be a safety chain to prevent</p> <p>3 the door from moving?</p> <p>4 Q Where did you learn that the purpose of the safety</p> <p>5 chain was to keep the door from sliding outboard?</p> <p>6 A It's just common knowledge of why you have a safety</p> <p>7 chain.</p> <p>8 Q What specifically do you base that on, though?</p> <p>9 A Well, common knowledge, and I believe in the</p> <p>10 testimony throughout here, that's Mr. Aguiar and</p> <p>11 Mr. Lima or Lisa Aguiar says that is the purpose of</p> <p>12 the chain.</p> <p>13 Q I'm asking you where do you base the opinion that</p> <p>14 the purpose of the safety chain is to keep the door</p> <p>15 from swinging outboard?</p> <p>16 A From swinging outboard and down, it's a stopper</p> <p>17 chain. If it wasn't a safety chain to prevent</p> <p>18 movement, why would you have it?</p> <p>19 Q To take the load off the main winch?</p> <p>20 A The safety chain doesn't take the load off the main</p> <p>21 winch.</p> <p>22 Q What do you base that on?</p> <p>23 A The main winch, the load is taken off by the brake.</p> <p>24 Q Is it your understanding that the load of the doors</p>

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<p style="text-align: right;">Page 129</p> <p>1 is never placed on the safety chain?</p> <p>2 A No, it is placed on the safety chain once it's set.</p> <p>3 That is the purpose of the safety chain, to restrain</p> <p>4 the door from moving once it's up in the air.</p> <p>5 Q What is your understanding of what they do on the</p> <p>6 MY WAY after they connect the safety chain? What is</p> <p>7 your understanding of the next step in the process?</p> <p>8 A They then transfer the wire that is connected from</p> <p>9 the bag of fish to the door to a hook-up point on</p> <p>10 the net drum that allows them to haul the fish</p> <p>11 aboard on the net drum.</p> <p>12 Q What is your understanding of after the -- Is that</p> <p>13 your understanding of the next action taken after</p> <p>14 the safety chain is connected on the FISHING VESSEL</p> <p>15 MY WAY?</p> <p>16 A That is the basic maneuver of what they are doing.</p> <p>17 They are transferring the fish net from the doors to</p> <p>18 the net drum to wind it up and bring the fish</p> <p>19 aboard. So in order to do that, the door has to be</p> <p>20 restrained, fixed to allow the man to take the chain</p> <p>21 off the door and hook it to the net drum.</p> <p>22 Q Why would you have to secure the door in order to</p> <p>23 take the, to transfer the --</p> <p>24 A How else could you unhook the chain from the door if</p>	<p style="text-align: right;">Page 131</p> <p>1 strain on the main towing wire, and that allows them</p> <p>2 to move the chain from the net drum to the door and</p> <p>3 the door to the net drum. Then when they hook the</p> <p>4 nets back up to the doors, then they set everything</p> <p>5 again after they unwind the net drum and they lower</p> <p>6 the doors and the doors drop down to the bottom with</p> <p>7 the nets and he starts towing again. So it's not</p> <p>8 hooked up to the net drum at that point. So they</p> <p>9 have to transfer the load from the trawl door to the</p> <p>10 net drum, from the net drum to the trawl door to</p> <p>11 reverse the process.</p> <p>12 Q You agree with me that they use the safety chain,</p> <p>13 they actually, after you hook up the safety, you</p> <p>14 actually lighten, you actually let the main winch</p> <p>15 out such that the load of the door is now taken up</p> <p>16 by the safety chain?</p> <p>17 A Partially, I believe. Again I haven't discussed</p> <p>18 that part of the evolution with them because it</p> <p>19 wasn't what they were doing at the time of this</p> <p>20 incident. They were not setting out, they were</p> <p>21 hauling back.</p> <p>22 Q When you are hauling back, is it your opinion that,</p> <p>23 what do they do with the doors after you set the</p> <p>24 safety chain?</p>
<p style="text-align: right;">Page 130</p> <p>1 it was swinging freely in space and not secure it to</p> <p>2 the side of the boat where you could reach it and it</p> <p>3 was swinging away? It would be more hazardous if it</p> <p>4 was allowed to swing back and forth and they were</p> <p>5 trying to move the net connection point from the</p> <p>6 door, the two doors that are pulling the net to the</p> <p>7 net drum.</p> <p>8 Q So it's your testimony, so we're clear about this,</p> <p>9 after the door, and talking about the FISHING VESSEL</p> <p>10 MY WAY, it's your understanding that after they</p> <p>11 pull, haul in the two main wires on either port and</p> <p>12 starboard and they haul it to the point where the</p> <p>13 doors are hanging adjacent to the gallus frame, is</p> <p>14 it your understanding at that point they lock the</p> <p>15 brake and they lock down the, tighten the brake on</p> <p>16 both winches, put the winch in neutral, okay, and</p> <p>17 they never touch the two main winches again until</p> <p>18 they are ready to set out? Is that your</p> <p>19 understanding?</p> <p>20 A No.</p> <p>21 Q When do they next touch the two main winches?</p> <p>22 A Some point they reduce the strain on the wire so</p> <p>23 that the doors are hanging alongside the boat on the</p> <p>24 wire and on the safety chain and they have less</p>	<p style="text-align: right;">Page 132</p> <p>1 A They reduce the strain on the wire.</p> <p>2 Q By letting out the main winch?</p> <p>3 A A little bit.</p> <p>4 Q Such that now the load of the door is hanging on the</p> <p>5 safety chain?</p> <p>6 A But still connected to the main wire. It's not</p> <p>7 disconnected from the main wire.</p> <p>8 Q The shackle has not popped out?</p> <p>9 A Right.</p> <p>10 Q But the load is being held --</p> <p>11 A You don't want the door to drop off into the sea and</p> <p>12 lose it, so it's still connected to the main wire</p> <p>13 and the safety wire.</p> <p>14 Q Directing your attention to your affidavit,</p> <p>15 paragraph 7 is what we've been talking about over</p> <p>16 the last hour or so, correct?</p> <p>17 A Um-hum.</p> <p>18 Q Paragraph 8, same sort of paragraph 8. Just before</p> <p>19 we move on, the amount of which the door moves away,</p> <p>20 moves relative to this safety chain, okay, because</p> <p>21 that's what we are talking about, we're talking</p> <p>22 about relative movement of the safety chain as</p> <p>23 compared to the door.</p> <p>24 A Safety chain was already around the chain on the</p>